



**U S Army Corps
of Engineers**
Huntington District

Public Notice

In reply refer to Public Notice No.
200600303

Issuance Date:
October 26, 2006

Stream: Berry Branch, Unnamed Tributaries of Berry Branch,
Right Fork Berry Branch and Unnamed Tributaries of Right
Fork Berry Branch

Closing Date:
November 25, 2006

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Huntington District
ATTN: CELRH-OR-F Public Notice No. (*reference above*)
502 Eighth Street
Huntington, West Virginia 25701-2070

Phone: (304) 399-5710

PUBLIC NOTICE: The purpose of this public notice is to inform you of a proposal for work in which you might be interested. It is also to solicit your comments and information to better enable us to make a reasonable decision on factors affecting the public interest. We hope you will participate in this process.

REGULATORY PROGRAM: Since its early history, the U.S. Army Corps of Engineers (Corps) has played an important role in the development of the nation's water resources. Originally, this involved construction of harbor fortifications and coastal defenses. Later duties included the improvement of waterways to provide avenues of commerce. An important part of our mission today is the protection of the nation's waterways through the administration of the Corps Regulatory Program.

SECTION 10: The Corps is directed by Congress under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the United States (U.S.). The intent of this law is to protect the navigable capacity of waters important to interstate commerce.

SECTION 404: The Corps is directed by Congress under Section 404 of the Clean Water Act (33 USC 1344) to regulate the discharge of dredged and fill material into all waters of the United States, including wetlands. The intent of the law is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

TO WHOM IT MAY CONCERN: The following application has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act (CWA). This notice serves as the Corps of Engineers' request to the West Virginia Department of Environmental Protection to act on Section 401 Water Quality Certification for the following application.

APPLICANT: Hobet Mining, LLC
P. O. Box 305
Madison, West Virginia 25130

LOCATION: The proposed project is located in Berry Branch, unnamed tributaries to Berry Branch, the Right Fork of Berry Branch and unnamed tributaries to the Right Fork of Berry Branch, which are tributaries to the Mud River. The Mud River is a tributary of the Guyandotte River, which is a navigable water of the United States. The proposed project is 3.3 miles southeast of Spurlockville, in the Jefferson District of Lincoln County, West Virginia (Latitude 38° 06' 50" and Longitude 81° 57' 42" NAD 27) as depicted on the attached **Site Location Map**.

DESCRIPTION OF THE PROPOSED WORK: The applicant is pursuing a state Surface Mining Control and Reclamation Act (SMCRA) permit (**S-5008-06**) from the West Virginia Department of Environmental Protection to perform surface mining activities primarily consisting of contour steep slope and highwall/auger mining activities utilizing a large shovel, auger, highwall miner, front-end loaders, dozers, trucks and etc. The proposed Surface Mine No. 22 (SF 22) would mine multiple seams including the Upper Kittanning, Middle Kittanning, Five Block, Upper Stockton, Middle Stockton and Coalburg Seams. The proposed project boundary would extend to the boundary of SMCRA Permit Nos. S-5016-92 Amendment No. 2, S-5002-03 original and IBR No. 1, and S-5003-06.

The proposed project would involve the following surface mining-related activities: a) mine-through stream segments; and b) sediment pond construction. The proposed project would involve a total of 498.7 acres of surface disturbances. The information provided indicates the proposed mine-through areas would permanently impact approximately 1,902 linear feet (or 0.61-acre) of perennial stream, 22,619 linear feet (or 3.30 acres) of intermittent stream and 9,722 linear feet of ephemeral stream (or 0.68-acre). In addition, approximately 60 linear feet (or 0.02-acre) would be temporarily impacted by sediment pond embankment construction. The sediment pond pool area is expected to extend upstream approximately 460 linear feet (or 0.15-acre). The proposed project would result in the placement of 6,346 cubic yards of fill material permanently placed and 412 cubic yards of fill material temporarily placed. The operational life of the project is expected to be four (4) years.

The information submitted indicates the Mud River Watershed is a state listed 303d stream.

ALTERNATIVE ANALYSIS: Coal mining is not considered to be water dependent; therefore, the applicant is required to show that other less damaging practicable alternatives are not available that would achieve the applicant's goal. No permit will be issued until our review of the alternative analysis clearly shows that upland alternatives are not available to achieve the applicant's goal.

MITIGATION PLAN: The applicant has not provided a compensatory mitigation plan pursuant to Section 404 of the CWA.

WATER QUALITY CERTIFICATION: A Section 401 Water Quality Certification is required for this project. It is the applicant's responsibility to obtain certification from the West Virginia Department of Environmental Protection.

HISTORIC AND CULTURAL RESOURCES: The National Register of Historic Places (NRHP) has been consulted and it has been determined there are no properties currently listed on the register that are in the area affected by the project. This public notice serves as coordination

with the State Historic Preservation Officer regarding historic properties. If the West Virginia Division of Culture and History (WVDCH) believe any potential effects to historic properties may result from the proposed permitting action, we request the WVDCH provide information to this office pursuant to Section 106 of the National Historic Preservation Act.

It should be acknowledged correspondence provided by the WVDCH, dated July 29, 2005 (FR No. 05-1104-LC), and submitted to the applicant (Hobet Mining, LLC) indicated additional information is necessary to complete their review. A *Phase I Archaeological Survey for the Proposed Northwest Reserve Area, Jefferson District, Lincoln County, West Virginia* has been submitted to the WVDCH by the applicant. In light of this proposed project, it is requested the WVDCH advise this office of their present determination.

ENDANGERED/THREATENED SPECIES REVIEW: This public notice also serves as coordination with the U. S. Fish and Wildlife Service (USFWS) regarding threatened or endangered species. The proposed project lies within the distribution range of the endangered Indiana bat (*Myotis sodalis*). This public notice serves as a request to the U.S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act (ESA) of 1972 (as amended).

The Huntington District has consulted the most recently available information and has determined that the project is not likely to affect the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species which has been determined to be critical. It should be acknowledged correspondence provided by the USFWS (Elkins Field Office) pursuant to the ESA, dated April 19, 2006, and submitted to this office by the applicant indicates the USFWS has concluded that no federally-listed endangered and threatened species are expected to be impacted by the project. In light of this proposed project, it is requested the USFWS advise this office of their present findings or opinion.

PUBLIC INTEREST REVIEW AND COMMENT: Any person who has an interest that may be adversely affected by the issuance of a permit may request a public hearing. The request must be submitted in writing to the District Engineer on or before the expiration date of this notice and must clearly set forth the interest which may be adversely affected and the manner in which the interest may be adversely affected by the activity. This application will be reviewed in accordance with 33 CFR 320-331, the Regulatory Program of the U. S. Army Corps of Engineers (USACE), and other pertinent laws, regulations, and executive orders. Our evaluation will also follow the guidelines published by the U. S. Environmental Protection Agency pursuant to Section 404(b)(1) of the CWA. Interested parties are invited to state any objections they may have to the proposed work. The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors that may be relevant to the proposal will be considered including the cumulative effects thereof; of those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use,

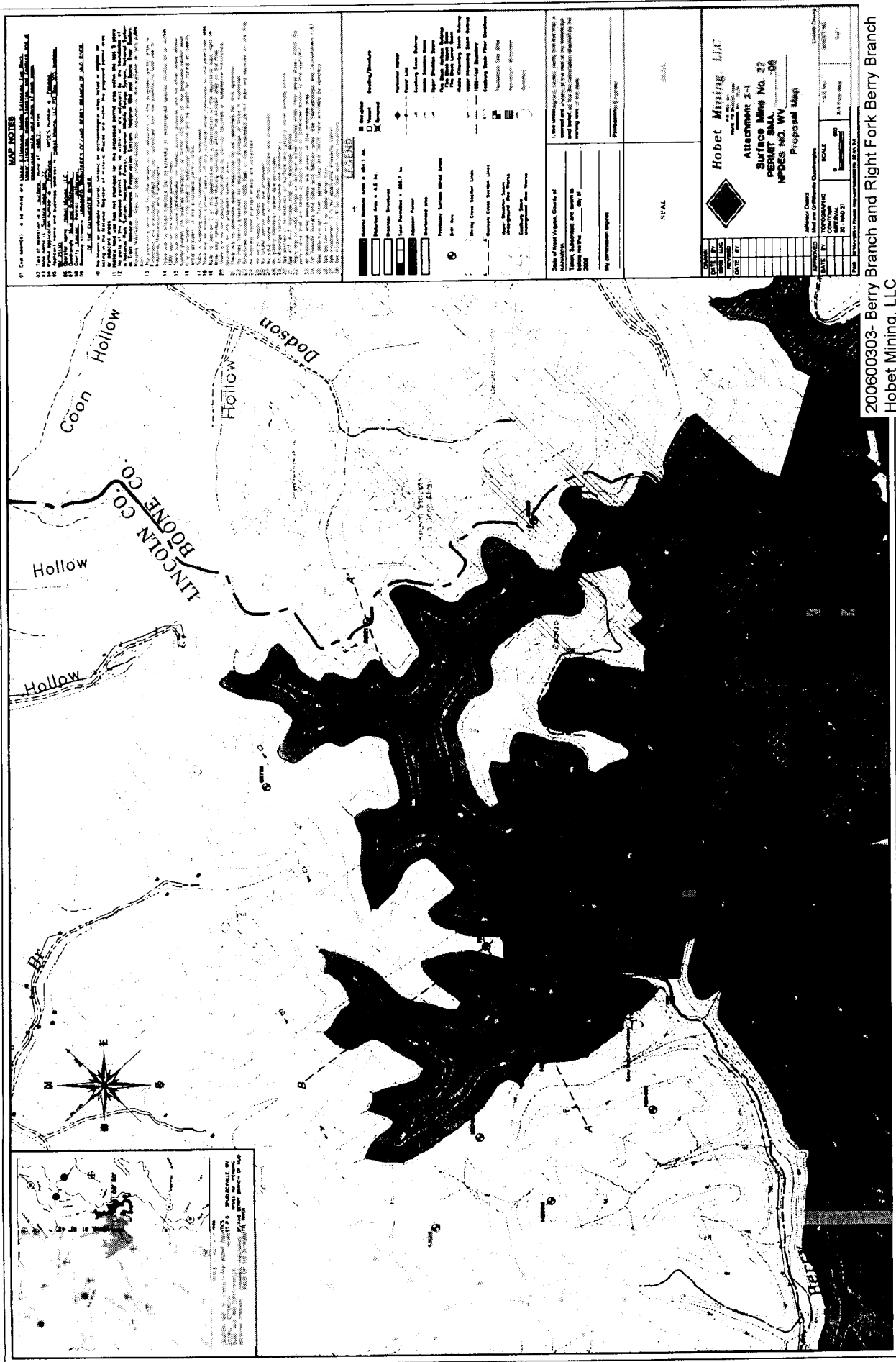
navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. Written statements on these factors received in this office on or before the expiration date of this public notice will become a part of the record and will be considered in the final determination. A permit will be granted unless its issuance is found to be contrary to the public interest.

SOLICITATION OF COMMENTS: The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. For accuracy and completeness of the administrative record, all data in support of or in opposition to the proposed work should be submitted in writing setting forth sufficient detail to furnish a clear understanding of the reasons for support or opposition. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

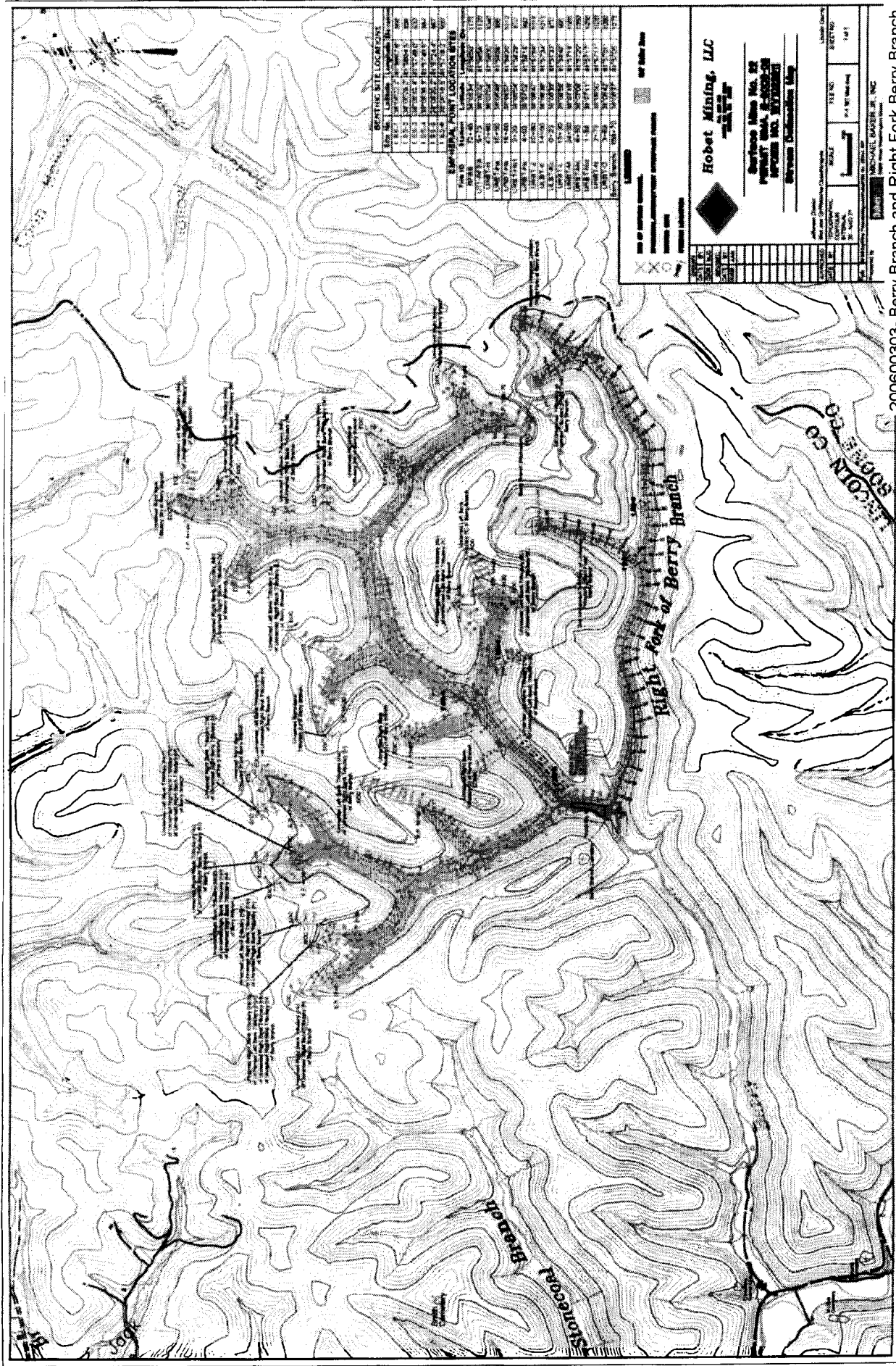
CLOSE OF COMMENT PERIOD: All comments pertaining to this Public Notice must reach this office on or before the close of the comment period listed on page one of this Public Notice. If no comments are received by that date, it will be considered that there are no objections. Comments and requests for additional information should be submitted to: Mr. Michael Hatten; Regulatory Specialist; South Regulatory Section (CELRH-OR-FS); U. S. Army Corps of Engineers Huntington District; 502 Eighth Street; Huntington, West Virginia 25701-2070. Please note names and addresses of those who submit comments in response to this public notice may be made publicly available. Thank you for your interest in our nation's water resources. If you have any questions concerning this public notice, please call Mr. Michael Hatten of the South Regulatory Section at 304-399-5710.


Ginger Mullins, Chief
Regulatory Branch

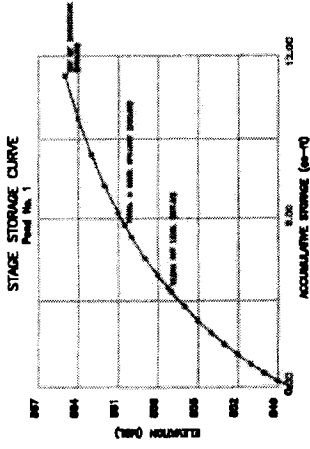
(W)



200600303- Berry Branch and Right Fork Berry Branch
Hobert Mining, LLC
Surface Mine No. 22
SMCRA Permit No. S-5008-06
Drawing 1 of 10

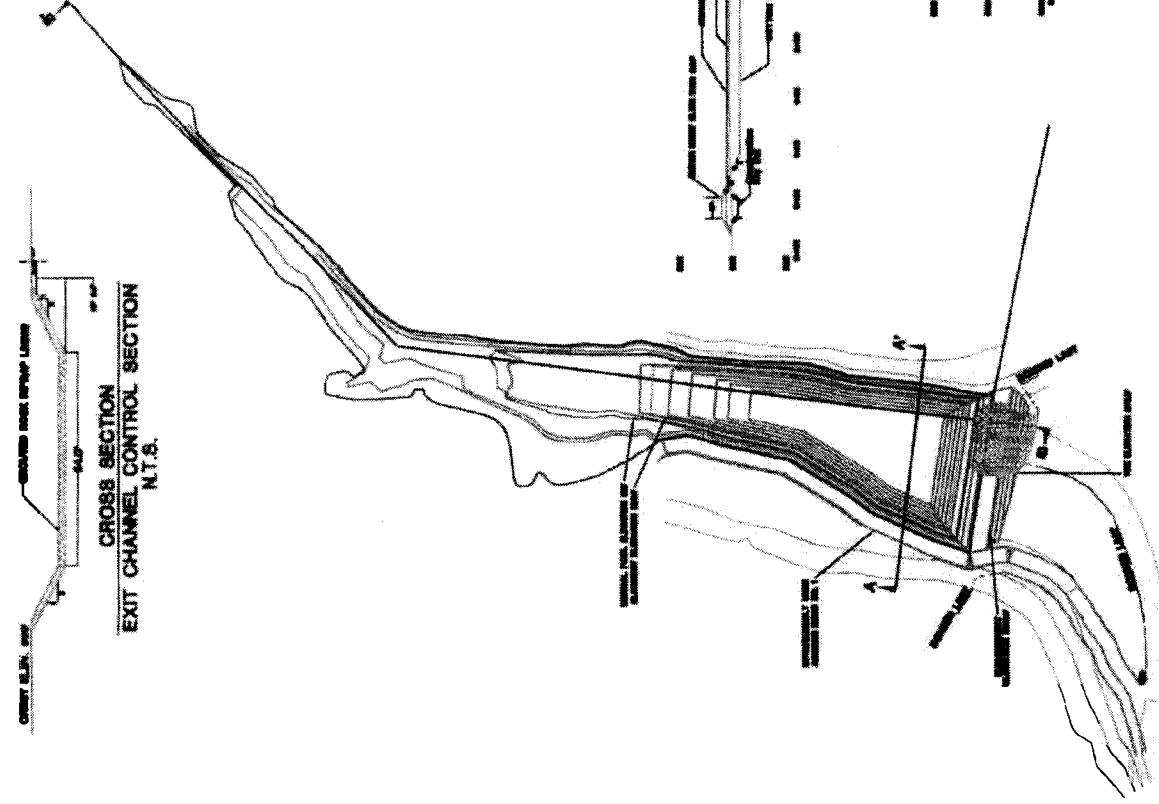


200600303- Berry Branch and Right Fork Berry Branch
 Hobet Mining, LLC
 Surface Mine No. 22
 SMCRA Permit No. S-5008-06
 Drawing 3 of 10



STAGE STORAGE CURVE
Pond No. 1

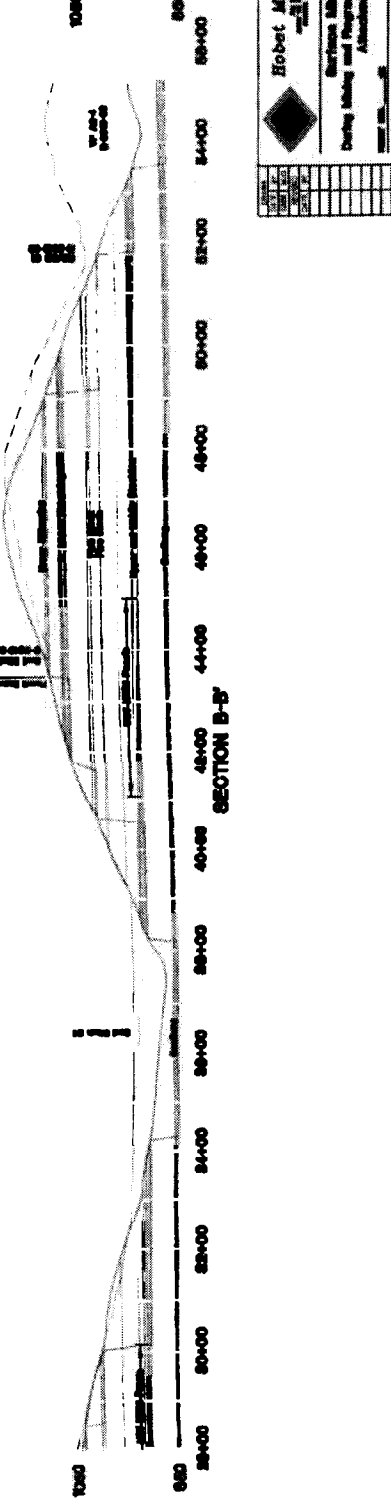
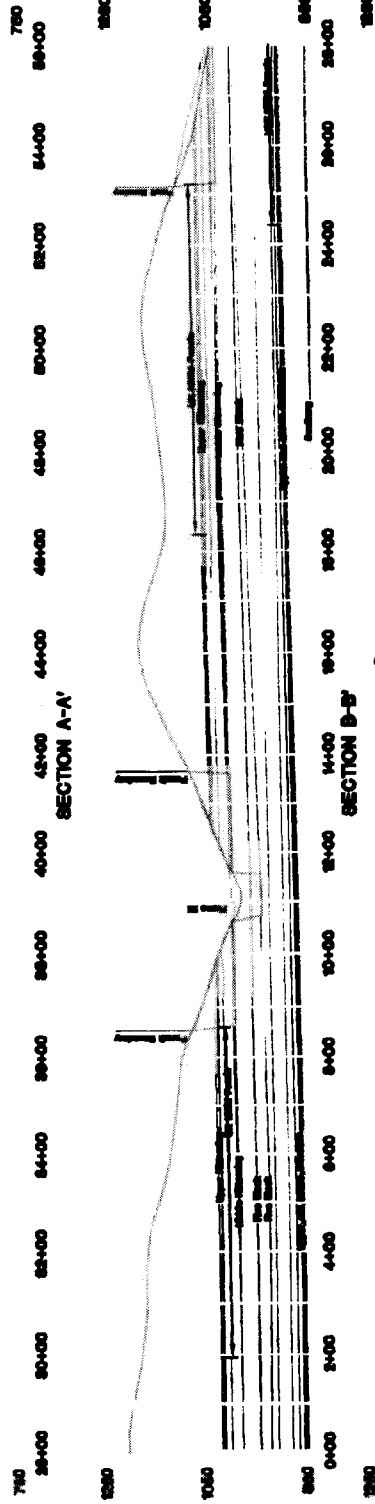
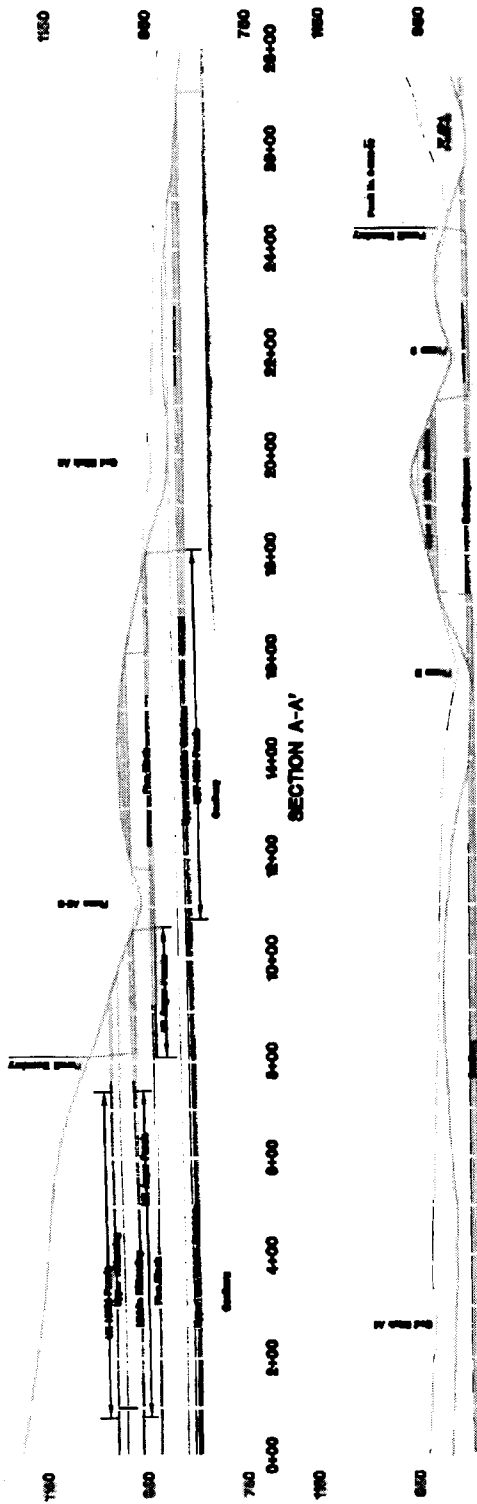
STAGE (ft)	ACCUMULATIVE STORAGE (ac-ft)	STAGE (ft)	ACCUMULATIVE STORAGE (ac-ft)
840.00	0.00	845.00	12.50
840.50	0.50	845.50	12.80
841.00	1.00	846.00	13.10
841.50	1.50	846.50	13.40
842.00	2.00	847.00	13.70
842.50	2.50	847.50	14.00
843.00	3.00	848.00	14.30
843.50	3.50	848.50	14.60
844.00	4.00	849.00	14.90
844.50	4.50	849.50	15.20
845.00	5.00	850.00	15.50
845.50	5.50	850.50	15.80
846.00	6.00	851.00	16.10
846.50	6.50	851.50	16.40
847.00	7.00	852.00	16.70
847.50	7.50	852.50	17.00
848.00	8.00	853.00	17.30
848.50	8.50	853.50	17.60
849.00	9.00	854.00	17.90
849.50	9.50	854.50	18.20
850.00	10.00	855.00	18.50
850.50	10.50	855.50	18.80
851.00	11.00	856.00	19.10
851.50	11.50	856.50	19.40
852.00	12.00	857.00	19.70
852.50	12.50	857.50	20.00



Hobert Mining, LLC
Surface Mine No. 22
Pond No. 1 Control Structure

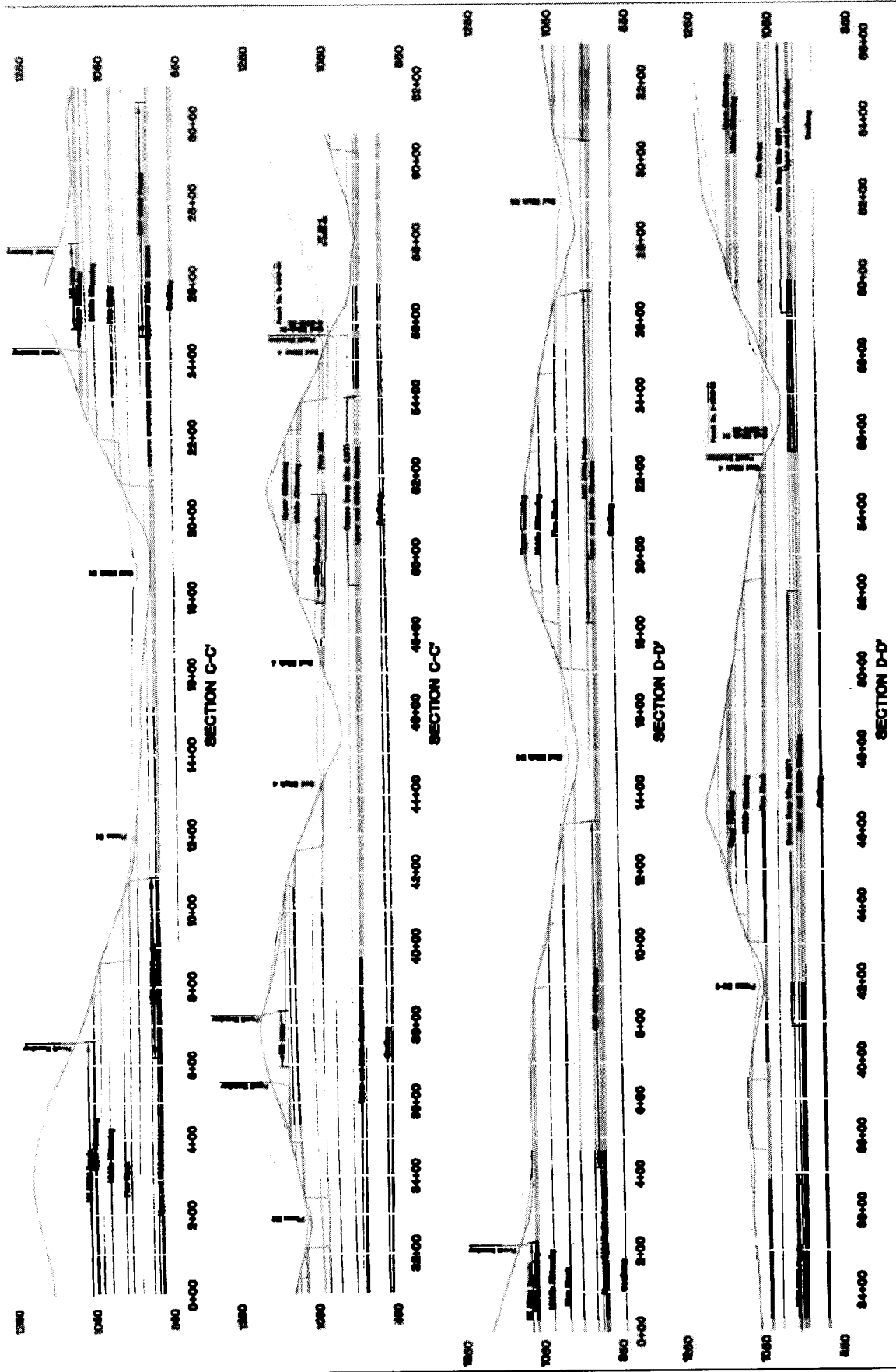
SCALE: 1" = 40'
DATE: 10/1/10
BY: [Signature]

PROJECT NO.	200600303	DATE	10/1/10
PROJECT NAME	Surface Mine No. 22		
PROJECT LOCATION	Pond No. 1 Control Structure		
PROJECT OWNER	Hobert Mining, LLC		
PROJECT ENGINEER	[Signature]		
PROJECT CHECKER	[Signature]		
PROJECT APPROVER	[Signature]		



Hobet Mining, LLC
 Surface Mine No. 22
 During Mining and Reclamation Operations
 Abandonment O-1

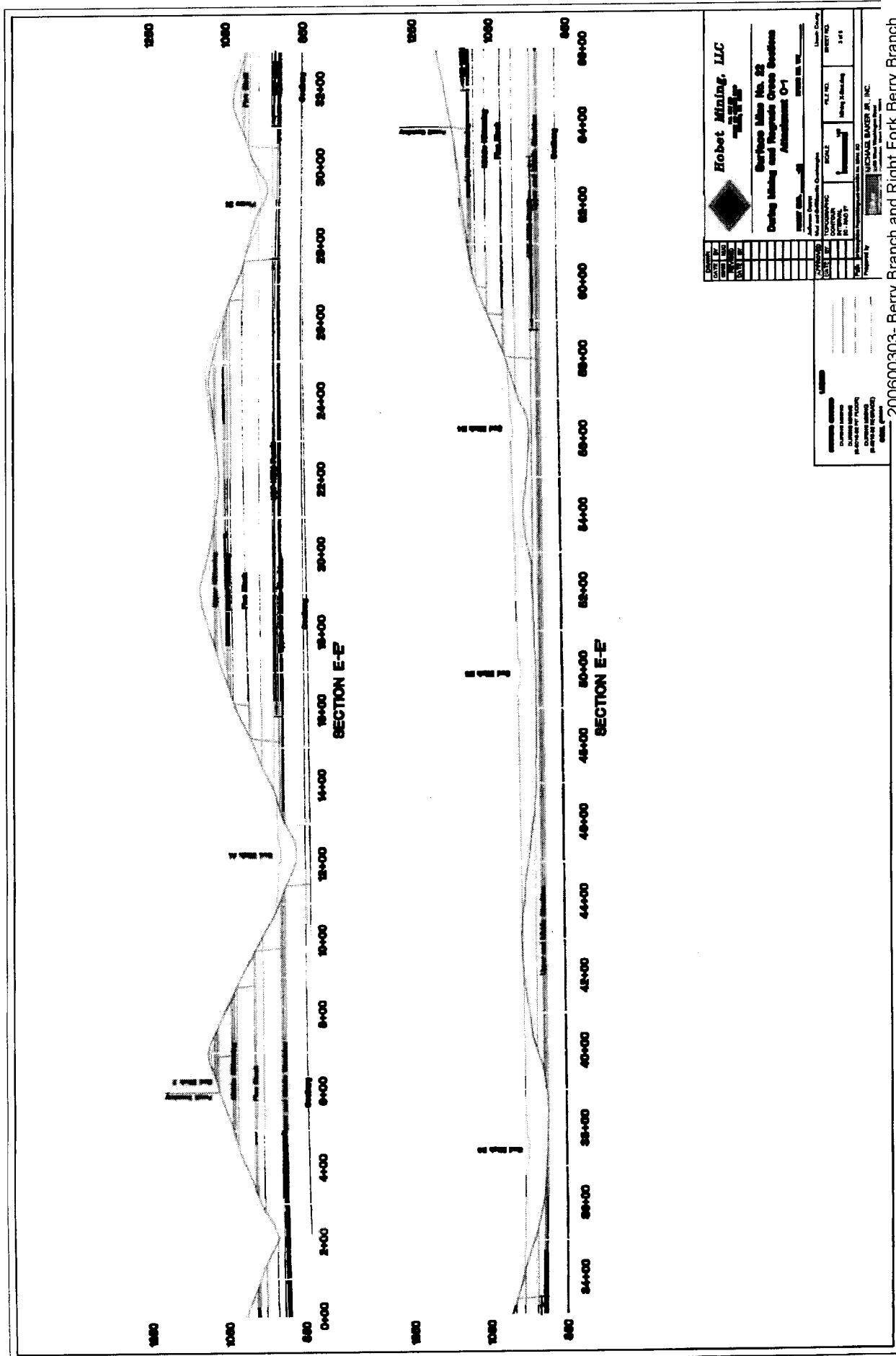
200600303- Berry Branch and Right Fork Berry Branch
 Hobet Mining, LLC
 Surface Mine No. 22
 SMCRA Permit No. S-5008-06
 Drawing 5 of 10



DATE	BY	CHKD	APPD

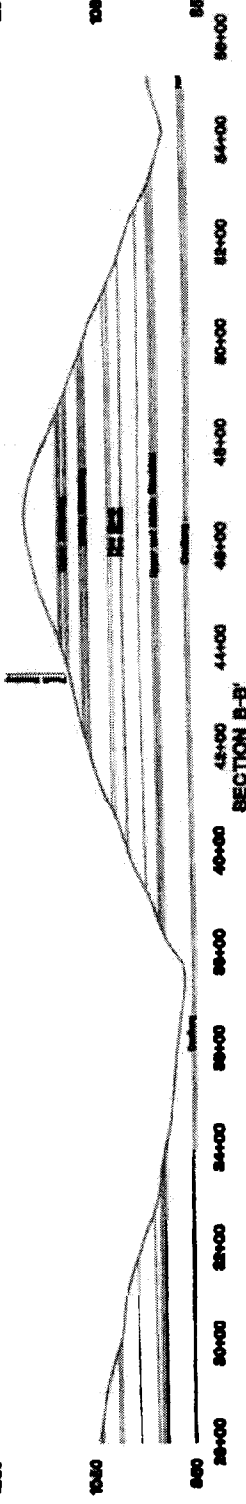
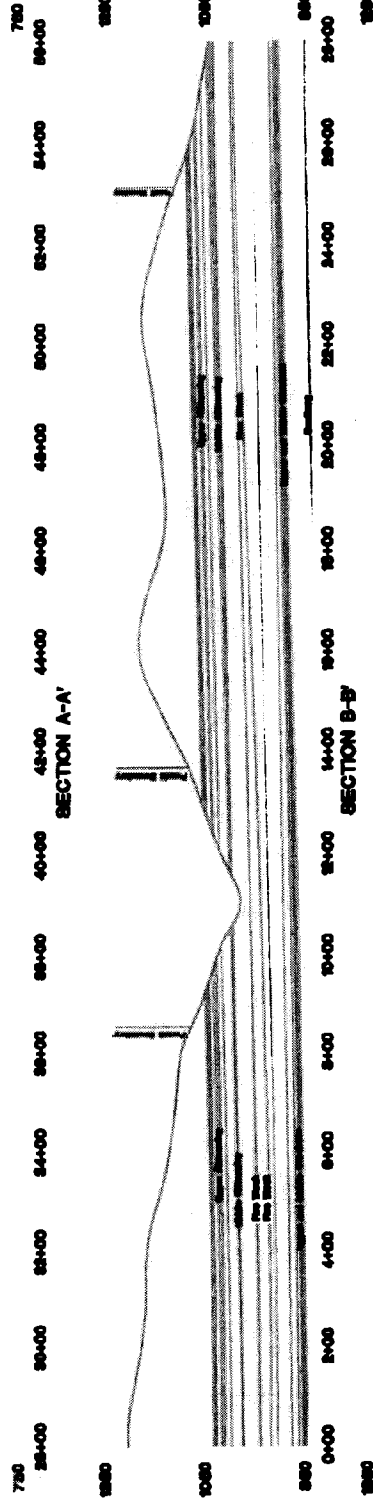
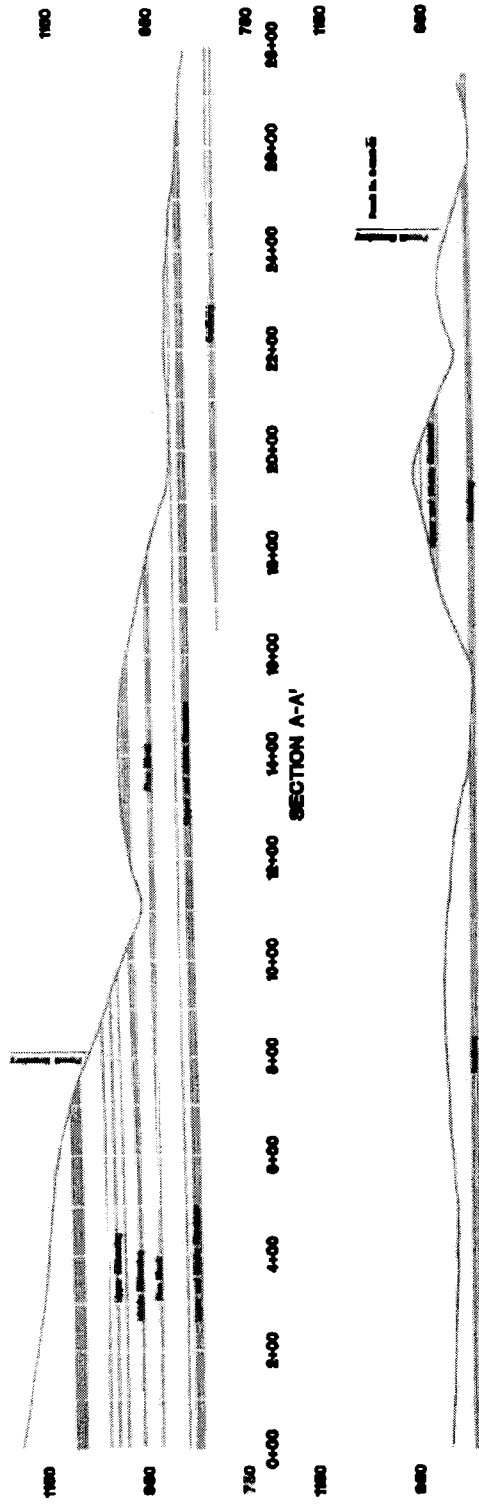
Hobet Mining, LLC
 Surface Mine No. 22
 Surface Mining and Reclamation Operations
 Amendment 0-1
 2006-00303- Berry Branch and Right Fork Berry Branch

200600303- Berry Branch and Right Fork Berry Branch
 Hobet Mining, LLC
 Surface Mine No. 22
 SMCRA Permit No. S-5008-06
 Drawing 6 of 10



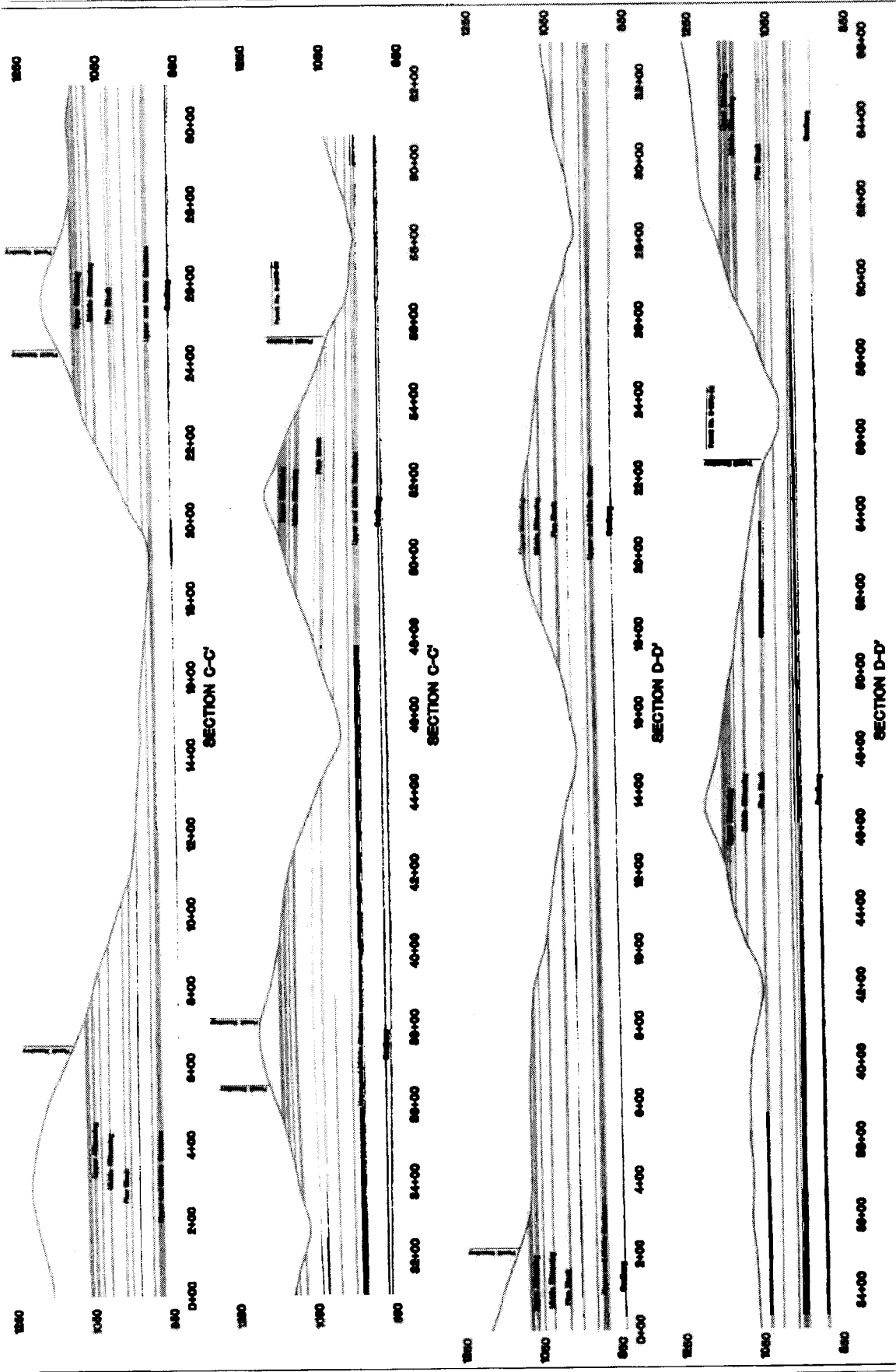
Hobert Mining, LLC Surface Mine No. 22 Daily Mining and Regrade Cross Section Attachment C-1		Project No. 2006000303 Date: 10/10/06 Scale: 1" = 100'
Prepared by: SEAN M. BAKER, JR., INC. Checked by: _____ Drawn by: _____ Picked by: _____ Plotted by: _____ Approved by: _____	Project No. 2006000303 Date: 10/10/06 Scale: 1" = 100'	Project No. 2006000303 Date: 10/10/06 Scale: 1" = 100'

2006000303- Berry Branch and Right Fork Berry Branch
 Hobert Mining, LLC
 Surface Mine No. 22
 SMCRA Permit No. S-5008-06
 Drawing 7 of 10



Hobert Mining, LLC
 Surface Mine No. 22
 Pits Mining Order Section
 Attachment D-1

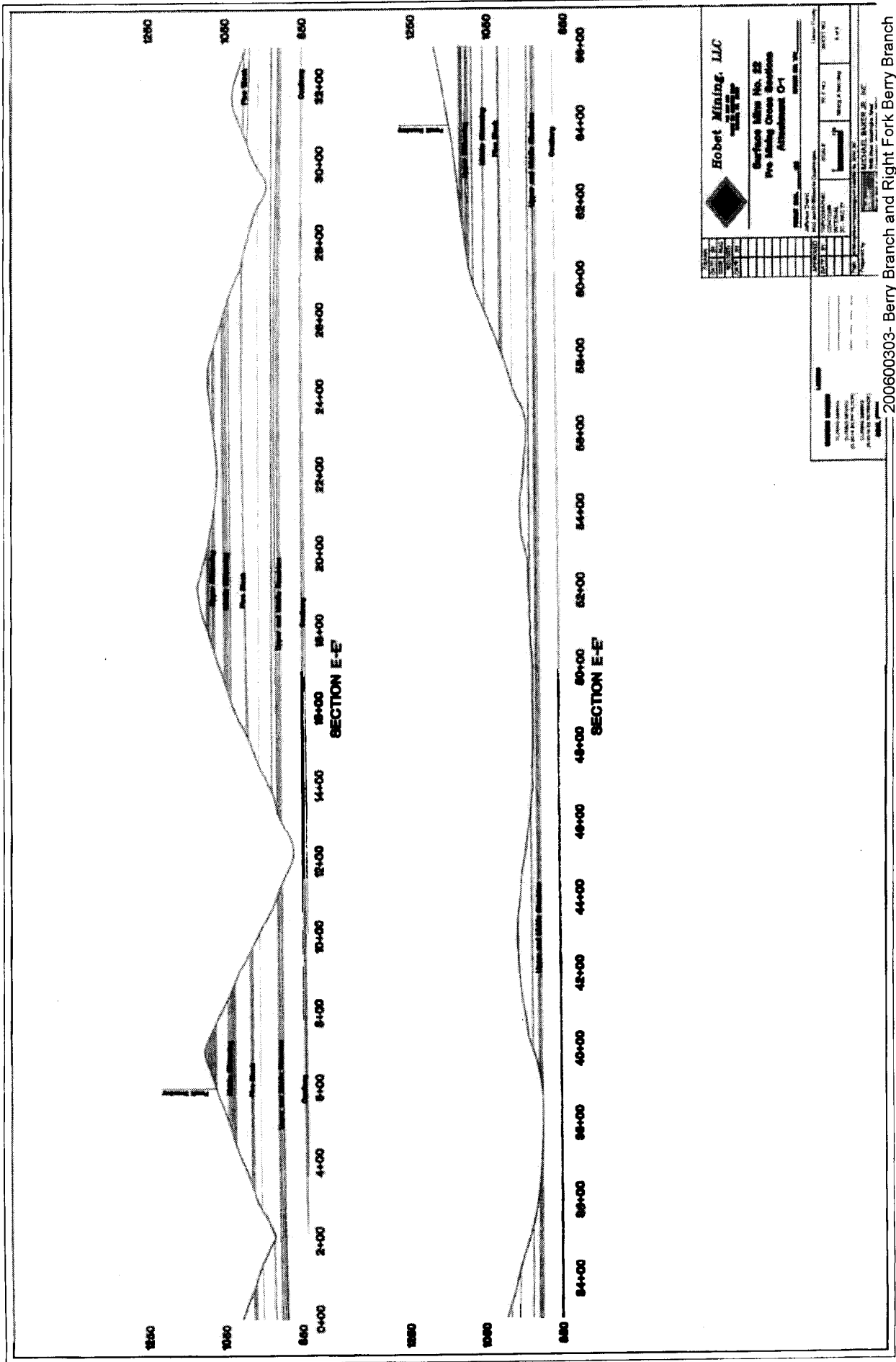
200600303- Berry Branch and Right Fork Berry Branch
 Hobert Mining, LLC
 Surface Mine No. 22
 SMCRA Permit No. S-5008-06
 Drawing 8 of 10



DATE	10/10/06
BY	J. L. BERRY
CHECKED	J. L. BERRY
APPROVED	J. L. BERRY

Hobert Mining, LLC
 Surface Mine No. 22
 Pre Mining Cross Sections
 Attachment C-1

200600303-Berry Branch and Right Fork Berry Branch
 Hobert Mining, LLC
 Surface Mine No. 22
 SMCRA Permit No. S-5008-06
 Drawing 9 of 10



200600303- Berry Branch and Right Fork Berry Branch
Hobert Mining, LLC
Surface Mine No. 22
SMCRA Permit No. S-5008-06
Drawing 10 of 10